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## THE LEGAL ANTECEDENTS OF A LEAGUE OF NATIONS.

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### I. THE ENFORCEMENT OF RIGHTS.

The practical conclusion that we draw from the doctrine of evolution is that we can only erect a stable structure by building upon a plan that already exists, and the more closely a new development approximates to the nature of a growth, the more lasting it is likely to be. The history of law and of political institutions provides numberless illustrations of the validity of this principle, in fact such history can be regarded as one long commentary upon it.

At the present time it would be a work of supererogation to offer any general account of the idea of a League of Nations, or to adopt the more specific and accurate term, a league to enforce peace. But it does not appear inappropriate to examine the idea in the light of a general principle, and to see what analogies we can find in history that may give us encouragement on the one hand, and suggest hidden dangers on the other. To the mind of a trained jurist these considerations will appear so elementary as to be unworthy of repetition, but when an eminent historian in a pamphlet on this very subject can seriously enunciate the proposition that International Law is merely a mixture of literature and ethics, one may venture to be elementary without giving offense.

Any general examination of the idea of law would take us too far afield, but there is one element in it that is essentially germane to our purpose. In highly civilized societies disobedience to the law is followed, with a degree of certainty varying according to the efficiency of the government, by consequences of a decidedly unpleasant character. In such societies these consequences result from the action of the government, acting either upon its own initiative, or upon that of the parties concerned. The success of the state in attaching such results to breaches of

law is never absolute, for in all places some crimes go unpunished, and some laws cannot be enforced; but the degree of certainty attained is no mean test of the level of civilization in the particular community concerned. In the technical language of jurisprudence these consequences are termed the *sanction* of law. They are its coercive element, and because of their existence we say that men are "bound" or "obliged" to obey the law.

Obvious and necessary as this may appear now, it is in reality a comparatively late development in the history of civilization, and one that was attained only by slow degrees, and after long and painful struggles "That imperative character of law, which in our modern experience is its constant attribute, is found to be wanting in societies which it would be rash to call barbarous and false to call lawless."<sup>1</sup> From Iceland and Ireland, from ancient Rome and ancient England, we can produce numerous instances of the time when the jurisdiction of the courts was like a voluntary submission to arbitration, and the execution of their decrees was left to the strong arm of the party adjudged to be law-worthy. The historians of legal institutions can trace the steps by which the arm of the law gradually acquired strength, and the exercise of private force was insensibly diminished. The natural history of procedure is one of the most fascinating chapters in the long story of the development of mankind towards the present standard of social life.

But the subject merits a little deeper consideration. Immediately, the enforcement of law rests upon its visible sanctions, the policeman and the sheriff's officer with their appropriate methods of persuasion, and in the last resort upon the armed forces of the state. But clearly this is only the outward and visible sign of an inward and spiritual grace. To apply the language of Hume's essay on the *First Principles of Government*: "as force is always on the side of the governed, the governors have nothing to support them but opinion." Legal theory certainly supports this proposition. It is possible for a handful of policemen to maintain order in a large town, and for one sheriff's officer to be sufficient for a whole English county, because lawbreakers are few and the overwhelming sense of the commu-

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1. Pollock, *First Book of Jurisprudence* (2d ed.) 24.

nity is against them. Were it otherwise, even if a strong and united minority were on the side of disorder, the policeman would be bound to retire in favor of the soldier, and the task of the latter would be difficult, and his influence precarious. Law has grown strong as the mass of opinion favorable to the maintenance of order has increased, until obedience to it has become so habitual that men have ceased to think of the basis upon which it rests. The matter may be summed up in this way. The enforcement of law depends in the last resort upon the existence of a sanction or coercive element behind it. That sanction is of two kinds, an immediate and visible sanction supplied by the force of the state; and a mediate, invisible, and ultimate sanction supplied by the public opinion behind the state.<sup>2</sup>

## II. THE POSITION OF INTERNATIONAL LAW.

From this subject it will be convenient to pass to the consideration of the position of International Law. The real question is whether such a thing exists at all, whether it is simply a collection of pious aspirations evolved by bookish moralists in the seclusion of their studies, "a mixture of literature and ethics"; or whether it is a collection of rules to which the term law can be applied without arousing an overmastering sense of the ridiculous. It is not merely to the man in the street that it has appeared to be a thing of shreds and patches. The jurists of the English analytical school have boldly classified it as "law which is not law." Austin called it Positive International Morality, and treated it on the same plane as the laws of honor and the laws of fashion. The feature that appealed to him was the absence of an effective sanction, or what we have ventured to call an immediate and visible sanction. It is idle to deny the force of this view. Nevertheless, there are strong reasons for saying that the world law can be used with perfect propriety in this connection, that is directly and not merely by way of analogy. Of course the mere fact that the rules of International Law are often

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2. This brief analysis of the basis of law is inadequate because of its brevity. The matter is a great deal more complicated than it appears to be, and the only elements that have been brought out are those relevant to the immediate purpose.

broken or disregarded is no ground whatever for denying its existence as law; any more than the fact of a number of thefts taking place affects the reality of the law of larceny, or that breaches of contract involve a denial of the law of contract.

In the first place the treatises upon the subject are not ethical but juridical in tone and outlook. Gentilis and Grotius and their successors do not expound a system of morals but a system of laws. Such success as they have attained is entirely due to this method. It is certain that for the last three centuries a system merely ethical would not have been treated by statesmen and diplomatists with any respect at all; it would have been relegated to the pulpit as a desirable and edifying subject of discourse on Sundays, but not a governing influence for men of affairs on week days. But however short of the aspirations of its professors its actual accomplishments may have fallen, it has never been in that position. Maine may have overstated the case in saying that the work of Grotius received the "enthusiastic assent of all Europe," but of the deep influence of the law of nations there is no question. The strength that enabled it to gain this influence was derived from the fact that it was founded on the actual doctrines of Roman law, and upon the scholastic interpretation of the law of nature. It professed to be derived from a source, and appealed to an authority, that were generally admitted to be binding.

In the second place, questions of International Law are surrounded by a legal atmosphere and are determined by legal methods. The appeal to precedents, the citation of authorities, the weighing of evidence, are part and parcel of the procedure of a court of law, not of a church or a lecture room. It is impossible to read the account of a great international arbitration or a sitting of the Hague Tribunal, without feeling that the whole method and apparatus employed are those appropriate to a legal tribunal.

In the third place, we may call the enemy to witness as devil's advocate. Gross as have been his abuses of International Law, he avoids wherever possible the stigma of directly infringing its authority. He even accuses the *Entente* powers of breaking its provisions, and seeks to justify the grossest outrages by state-

ments of transparent mendacity. An Essex fishing village becomes a fortress to justify its bombardment, the sinking of merchant ships was once condoned on the grounds that they carried munitions, or that they were armed, or that they resisted capture; and other abominations were made to appear in the light of reprisals. Before the war, however, all these and any other breaches of law were condoned in advance by an ingenious theory which distinguished between the ordinary rules of law or *Kriegsmanier*, and *Kriegsraison* or the exceptional cases in which these rules can be disregarded on the ground of extreme necessity; the judge of the necessity being of course the commander or the government that commits the breach of the ordinary rules. It would be superfluous to refute this piece of sophistical pedantry, but it is interesting as an illustration of German mentality, and especially as showing that the Germans themselves recognize that a breach of International Law is a matter that demands some intellectual justification.

The position here indicated was summed up by the late W. E. Hall (*International Law*, 7th ed., p. 14) in these words:

"The doctrines of international law have been elaborated by a course of legal reasoning: in international controversies precedents are used in a strictly legal manner: the opinion of writers are quoted and relied upon for the same purposes as those for which the opinions of writers are invoked under a system of municipal law: the conduct of states is attacked, defended, and judged within the range of international law by reference to legal considerations alone: and, finally, it is recognized that there is an international morality distinct from law, violation of which gives no formal ground of complaint, however odious the action of the ill-doer may be. It may fairly be doubted whether a description of law is adequate which fails to admit a body of rules as being substantially legal, when they have received legal shape, and are regarded as having the force of law by the persons whose conduct they are intended to guide."

Nevertheless it would be unwise to ignore the fact that an immediate and visible sanction for International Law does not exist at present. The ultimate invisible sanction is the same as in the case of municipal law, viz., the force of opinion. Even this

is weaker than the same thing within the boundaries of one state, because the general opinion of the civilized nations is weaker, more indefinite, and less organized than public opinion within any one nation.<sup>3</sup>

### III. THE DEVELOPMENT OF LAW.

The great historical school of jurists, of whom Maine was the most distinguished English representative, have worked out the general lines of the evolution of law with sufficient fullness. It is certain that whatever value the theory that regards law as the command of the sovereign may have in analyzing the contents of fully developed legal systems; it has little or none in assisting our understanding of the early stages. Dry and repulsive as the subject may appear at first sight, there is in reality no more instructive study than the history of legal procedure. We see there the coercive power of government, so omnipotent in modern times, at first almost absent, and later extending its influence by very gradual stages, and almost apologetically. Maine's famous description of the *Legis Actio Sacramenti* of the Romans, and his happy comparison of it with the account in the *Iliad* of one of the scenes portrayed on the shield of Achilles, shows it as a "dramatization of the origin of justice." The procedure is that of a voluntary arbitration in which the representative of the state insensibly acquires the position of arbitrator.

The Barbarian Codes generally are largely concerned with the rules regulating the practice of distress. Distress is in its essence an extrajudicial proceeding, which the state only attempts to regulate by slow stages. So slow has the process been that it is possible to read in our present law books of the ancient procedure known as Distress of Cattle "Damage Feasant," and the consequent Action of Replevin, in which the incidents of a foray can even now be traced below the surface. The development of

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3. The literature on this subject is immense. Besides the ordinary general works the reader may be referred to the excellent account in Ramsay Muir, *Nationalism and Internationalism* (1916); Dr. A. Pearce Higgins' lecture on the *Binding Force of International Law* (Cambridge, 1910) and for *Kriegsraison*, Westlake, *Collected Papers on Public International Law*, 243 *et seq.*

legal procedure can in short be viewed as the gradual regularization of the primitive method of self-help, from the time when the strong man armed and he alone could keep his goods in peace. The stages of the process varied greatly in different countries, and under diverse conditions, but we are here concerned only with the general proposition that the imperative and coercive character of law was the final result of a long and painful evolution.

One striking illustration of the extreme persistence of the early ideas is afforded by the history of duelling. For centuries past the practice has been prohibited by the laws of all civilized states, from the time at any rate of the final abolition of the feudal process of trial by battle. A person who killed another in a duel was a murderer in the eyes of the law. Yet in spite of the threat of the extreme legal penalty the practice continued in England until about a century ago, and has existed in some European states to the present time. Obviously the impotence of the law was due to the fact that the ultimate sanction of public opinion behind it was not sufficient to ensure its enforcement. The importance of the matter from our present standpoint lies in the fact that it was not considered seemly that questions of personal honor should be submitted to the arbitration of a court of law. The only proper guardian of personal honor was a man's right arm.

#### IV. THE PROBLEM.

The foregoing summary, sketchy and inadequate though it be, ought to render the elements of the problem before us clearer. If we wish to build on a sure foundation it is necessary to consider not only the position of international affairs at the present time, but also the long drawn out evolution that has given us peace and security within the boundaries of our states. We must keep our eyes steadily fixed on the ideals before us, but must remember the length and character of the process by which the rule of law in a free state was attained. The character and stability of the superstructure that we hope to raise will be determined absolutely by the solidity of the foundations and the suitability of the materials used in the building. To put the matter in a few words, what we mean by the enthronement of public



right is that the general principles of international morality should be placed upon a similar basis to that of law in a free state.

Following the lines of our previous analysis, this proposition seems to involve these conditions or principles:

(1) First, it would be useless to attempt to go beyond the general level of public opinion and morality at any particular time. It is well to aim high, but not so high as to overshoot the mark. Legal history proves to us that as opinion is the ultimate sanction of law, laws that attempt to go far beyond the general level of opinion are utterly ineffective and fall into desuetude. The statute book is crowded with the ghosts of ideals that have failed.

(2) Secondly, it is necessary to have an immediate and effective sanction. The ultimate sanction of opinion is very well as far as it goes, but at a quick crisis when it is most wanted you cannot *find* public opinion. It is likewise the ultimate sanction of private law, but the general opinion in favor of the institution of private property is of little use in preventing a particular robbery. For that purpose the policeman is necessary, however much his effectiveness depends upon the knowledge that public opinion is behind him. Therefore to ensure the effectiveness of international law a policeman of world-wide powers is an essential condition.

(3) Thirdly, to make any international system of law completely effective, there must be no reservation of questions of national honor or vital interest. This has been a blot upon all the attempts made so far to create an effective international tribunal, and it would be utopian to suggest that the difficulty can be overcome easily or quickly. The extension of the sway of private law was seriously retarded because men insisted upon keeping questions of personal honor in their own hands to be decided by the duel. The position is precisely analogous to that existing in international politics at present. It will be long before any nation will consent to commit a question that it considers one of honor or vital interest to any independent body whatever. Yet not more than two hundred years ago a large majority of the gentlemen of Europe would have said the same thing concerning questions of their own honor and the ordinary courts; but nevertheless the

intervening period has seen the complete triumph of the reign of law. However distant therefore the vision may seem, we have strong historical reasons for hoping that it is one that may be capable of realization in the end.

Of these three conditions the first is beyond comparison the most important. Grant that and gradually all other things shall be added unto it. But without a change of heart, without a definite determination on the part of the civilized peoples of the world to seek peace and ensure it, without a solid basis of an instructed and determined public opinion, any creation of machinery would be useless and mischievous. Useless because it would certainly be ineffective, and mischievous because it might engender a false sense of security, and give a greater opportunity to a robber state to essay the domination of the world.

#### V. A PARTNERSHIP OF NATIONS.

It may be advisable at this point to consider briefly what steps have already been taken towards the establishment of an unity of civilization and a reign of law between the nations.<sup>4</sup> Not only is the nation-state a recent growth, but its growth was effected in the teeth of the prevalent political theory. The Roman Empire actually accomplished an union of Western civilization, though at the cost of stifling the elements that made for growth. All through the middle ages the ideal of unity remained the one overshadowing element in all political speculation. It is strong in Augustine's *City of God*, it is equally strong a thousand years after in Dante's *Monarchia*. Nothing but the most abiding sentiment could have kept alive for ages such a miserable travesty of the past as the Holy Roman Empire, which deserved, for centuries before it received, Voltaire's famous description as "neither holy, nor Roman, nor an empire." The visible unity of the western world during the ages of feudalism was the church, and the Pope was the real head of the *Res publica Christiana*. His authority was itself largely founded on the memories of the past, for the Papacy, as old Hobbes remarked, was "no other than the ghost of the deceased Roman Empire sitting crowned

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4. See especially on this point the essays edited by F. S. Marvin entitled *The Unity of Western Civilization* (Oxford, 1915).

upon the grave thereof.”<sup>5</sup> There are few more curious chapters in the history of political theory than those that record the conversion of a theory founded on unity to one founded on diversity. The philosophers of the thirteenth and fourteenth centuries found that the ground was crumbling beneath their feet. The *imperium* was one and indivisible and could not otherwise be conceived, yet strong self-contained states were springing up on every side. The process of reconciliation was long and painful. It reached its culmination in Bartolus of Sassoferrato—the last great medieval publicist,—and in the maxim “*Rex in regno suo est Imperator regni sui.*” Shortly afterwards the Renaissance supervened, Machiavelli and Bodin formulated the theory of the sovereignty of the state, and the schoolmen and their ideals of unity were buried and forgotten.<sup>6</sup>

Mr. Ramsay Muir in his *Nationalism and Internationalism* gives a most interesting account of the schemes of Sully and St. Pierre, but their practical effect was little or nothing. Generally we may say that from the beginning of the Renaissance to 1815 the only real advance in the direction of European unity was the growth of International Law. It was an attempt to replace in a world of sovereign states the moral authority formerly held by the Papacy. Europe had lost the keeper of her conscience, and the only alternative to a state of moral anarchy was to find a new one whose authority would be recognized. The law of nations in its modern sense dates from the Renaissance and Reformation. It purported to be based directly on the law of nature, and indirectly on the Civil Law, and therefore was a distinct effort to reestablish the rule of right in the relations between states. As Mr. Muir well remarks, “International law is the gift of the little states to Europe,” for those who had small power could only appeal to the greatness of right.

The years immediately following 1815 saw the foundation of the Holy Alliance;—the first real effort to establish a confederation of Europe. It failed, and it is only pertinent to our purpose to inquire whether the causes of its failure were inherent

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5. *Leviathan*, Part IV, ch. 47.

6. Upon this fascinating subject see the admirable essay by Mr. C. N. S. Woolf, *Bartolus of Sassoferrato* (Cambridge, 1913).

in any such scheme, or whether they were merely due to peculiar and transitory conditions. Of two competent modern historians Mr. D. Alison Phillips takes the pessimistic view and Mr. Ramsay Muir the optimistic. Whichever may be right, one can affirm that no league of sovereign rulers would have any chance of being established now, and that whatever form a confederation might take, it would not be that of the Holy Alliance. The world has suffered too much from "this king business" for that.

During the nineteenth century the movement made distinct though gradual progress along four main lines. They may be briefly summarized as they form the foundation from which any further development must necessarily proceed.

1. International Law has developed steadily. The Declaration of Paris, the Geneva Convention, and the Hague conventions, are definite acts of legislation, however far they may fall short of the aspirations of their framers. Hardly less important has been the progress made in the exposition and application of principles by the jurists. The *Annuaire* of the Institute of International Law, apart from individual text books, represents the considered collective opinion of the greatest jurists upon most of the fundamental aspects of the subject.

2. Concurrently with the growth of International Law there has taken place a very remarkable movement in favor of international coöperation in matters of private law. The Berne convention on copyright is a striking example, and quite recently efforts have been made to deal internationally with the white slave traffic. There seems considerable scope for further progress along these lines, especially in the direction of establishing uniformity in commercial law.

3. The congresses of Europe have been a special feature of the last century. Putting aside those that followed the peace of 1815, the Balkan questions have been settled more than once by such means, so was the Moroccan question, and above all the partition of Africa among the powers of Europe. When one looks back upon the long wars of the eighteenth century that were waged upon colonial questions, the settlement of such a problem by such means was a stupendous achievement. Despite

criticisms upon the many failures of European congresses, that one example proves that, given a reasonable amount of goodwill among the powers represented, it is one of the most powerful engines for the preservation of peace.

4. The progress of international arbitration has been equally noteworthy. The full history of the subject must be read in special manuals, but the more striking examples such as the *Alabama* arbitration, and that arising out of the firing of the Russian fleet upon British trawlers in the North Sea in 1904 are in the minds of everyone. In 1900 a notable advance was made in the establishment of a regular tribunal at the Hague to deal with such matters, and this has been followed by the conclusion of a long series of general arbitration treaties between a number of states. Questions of "vital interest" on "national honor," however, were generally excepted from the scope of these treaties.

#### VI. THE ENFORCEMENT OF PUBLIC RIGHT.

Such having been the position before August, 1914, what are the steps that appear to be immediately practicable to secure a greater advance towards the ideal before us? It need hardly be remarked that the condition precedent must be the complete defeat of the Central Powers in the present conflict. The history of Germany since 1870, the behavior of the German representatives at the Hague Conferences, the teaching of Treitschke and the Berlin school generally, the utter and systematic disregard not merely of the provisions of international law but of the ordinary principles of morality, prove that the war is above all else a war between ideals. Against an armed doctrine, and that doctrine the gospel of power, nothing but force can prevail. It must be overthrown to prove to its very votaries in the only way that they will understand, that it is rotten to the core.

In considering possible practicable measures it will be well to have a specific set of proposals to serve as a basis for discussion. There are no lack of schemes towards international government, some of them wild and unpracticable enough, but the most suitable for our purpose appears to be the programme of the League to Enforce Peace. In the first place it is extremely moderate, in

the second place it is the production of practical men of affairs assisted by life-long students of political science, and in the third place it has received the definite approval of men who have held high offices of state. Whatever its defects may be, it is likely to possess the supreme merit of practicality. It is contained in four articles the effect of which is as follows:

1. All justiciable questions arising between the signatory powers, not settled by negotiation, shall, subject to the limitations of treaties, be submitted to a judicial tribunal for hearing and judgment both upon the merits, and upon any issue as to its jurisdiction of the question.

2. All other questions arising between the signatories and not settled by negotiations, shall be submitted to a council of conciliation for hearing, consideration, and recommendation.

3. The signatory powers shall jointly use forthwith, both their economic and military forces against any one of their number that goes to war, or commits acts of hostility against another of the signatories, before any question arising shall be submitted as provided in the foregoing articles.

4. Conferences between the signatory powers shall be held from time to time to formulate and codify rules of international law, which, unless some signatory shall signify its dissent within a stated period, shall thereafter govern the decisions of the Judicial Tribunal mentioned in Article I.

The executive committee of the League have also authorized the following interpretation of Article III:

The signatory powers shall jointly employ diplomatic and economic pressure against any one of their number that threatens war against a fellow signatory without having first submitted its dispute for international inquiry, conciliation, arbitration, a judicial hearing, and awaited a conclusion, or without having in good faith offered so to submit it. They shall follow this forthwith by the joint use of their military forces against that nation if it actually goes to war, or commits acts of hostility against another of the signatories before any question arising shall be dealt with as provided in the foregoing.

The very limitations of this scheme bring out the striking analogy between the growth of international law and that of private law. The direct and primary object of the scheme is not to secure the reign of law but merely to prevent war; not to establish an ideal rule of justice but to bring the disputants into court. It was exactly in this way that law gradually established its supremacy over individual men, and that analogy is the best possible guarantee that the method proposed is the right one. Again, just as in the primitive courts, the tribunal merely pronounces a decision, and leaves the matter at that; its subsequent enforcement is left to the parties themselves and the pressure of general opinion. Students of early law will be able to adduce numerous examples of this stage of development from every part of the globe. To those that desire to create a new world in a hurry the proposals will seem a very poor and unsatisfactory production. But to those who are convinced that slow growth is essential to lasting stability, the moderation of the scheme will appeal as a supreme merit. Further progress is always possible once the first step is firmly planted, but a false beginning would discredit the ideal and possibly throw it back for generations.

There are certain other points that deserve a slightly more detailed examination.

The cardinal point in any effective scheme must be an enforced period of delay before commencing hostilities. It is not only that time is the healer of angry passions, but delay will in most cases defeat the military advantage sought by an aggressive power. "Rapidity of movement," said the German Chancellor to Sir Edward Goschen in August, 1914, "is Germany's chief asset." Any soldier will emphasize the supreme importance of surprise and swift movement. "Time is everything" was one of Napoleon's military maxims. The period of delay will give time to the disputants to perfect their military arrangements with the result that at the end of the period military action would probably be useless because there would be no reasonable chance of its being decisive.

The composition of the League is a matter of great importance. It would probably be advisable in the first instance to restrict it to certain Great Powers and to extend gradually from that basis.

At any rate membership of the League must be a matter of election, not of right; the scheme put forward by Herr Erzberger, the leader of the German Centre party, and accepted by certain groups in England, that any sovereign state may join the league on the decision of the state's legislative body, is altogether inadmissible. The difficulty in the way of accepting that suggestion is the doctrine of the equality of all sovereign states. The doctrine was the cause of endless difficulties at the Hague conferences, and has been well described as Roman Law in the wrong place. It would be a manifest absurdity if a rule of International Law upon which all the major states were agreed could not come into being under Article IV because some petty Central American republic signified its dissent.

Again, there is no definition of "justiciable" cases in Article I. This difficulty arose in an acute form at the Hague Conference of 1907 when a list was made of twenty-four types of disputes that should always be submitted to arbitration, but as Germany and Austria voted against all the items on the list, nothing could be done. It is evident, however, that definition has been purposely avoided. The framers of the league have probably remembered the maxim "*omnis definitio in jure periculosa*," and in any case they have been reared in the traditions of the common law. The judicial tribunal itself is to decide questions as to the limits of its own jurisdiction, and the intention evidently is to allow a body of precedents to grow up that shall be as capable of expansion as the common law itself. Whether this will gain the assent of nations whose judicial traditions are derived from Roman law is somewhat doubtful and must be left to the future.

Fourthly, there is the principle of abstention from interference in the internal affairs of any of the signatory powers. This is evidently tacitly assumed, and the verdict of history proves its necessity. At the same time, it is possible that rebellions within a state may be in the future as they have been in the past, potent causes of war. If a struggling nationality throws off its allegiance to the state of which it forms parts and declares its independence, is the rest of the world to look on idly and make no effort to get the questions adjusted on the basis of right? Prob-



ably at present it is better to leave the question unanswered, because future circumstances cannot be foreseen, and efforts must be made to deal with them when they arise. But one great advantage will have been gained;—there will be international machinery in existence, whether it will be possible to use it successfully or not.

Finally, there is the problem of the revision of treaties. There is a sense, though not that used by Treitschke, in which it is true to say that treaties are made on the basis of "*rebus sic stantibus*." As in the past so in the future, some nations will grow and others decline, and there will always be problems of access to the sea, colonization, and peoples under alien rule. For the moment the problem remains in the same position as that of interference in international affairs, *viz.*, that it is impossible to say anything really relevant upon it. It must be left to the sphere of diplomatic negotiation, possibly assisted by the international machinery.

Modest as the suggestions of the League to Enforce Peace may appear to enthusiasts, it is certain that they are the most practicable that have yet been brought forward, and that they would afford the necessary foundation for "the slow and gradual process" by which the idea of public right will be enthroned as the governing idea in the politics of the world.

H. L. RANDALL,  
*in Yale Law Journal.*